

(2002) 03 DEL CK 0126
In the Delhi High Court
Case No : CWP No. 661/99

R.C. Agrawal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 30
Central Labour Service Rules, 1987 — Rule 17
Recruitment Rules of Labour Officer (Central Pool) Recruitment and Conditions of Service Rules, 1951 — Rule 3, 5, 8(2)

Citation : (2002) 03 DEL CK 0126

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Inderjit Singh and Kul Bhushan, for the Appellant; Maninder Singh and N. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Whether the petitioner is entitled to the benefit of added service so as to enable him to get full pension, is the question involved in this writ petition.

2. The basic fact of the matter is not much in dispute.

3. The petitioner was appointed as Labour Enforcement Officer in the organization of Chief Labour Commissioner on 12th September 1966. The said post was Group "B" Gazetted one.

4. The terms and conditions of the service of the Labour Enforcement Officers are governed by the Assistant Labour Commissioner Recruitment Rules, 1958 (hereinafter called "the 1958 Rules"). The age limit for appointment was 30 years and the educational qualification required. Therefore, there was a degree of post-graduation. The petitioner was selected for the post of Labour Officer by the Union Public Service Commissioner on or about 19th October 1976 in the Central

Pool of Labour Officer maintained by the Ministry of Labour. The terms and conditions of the service are governed by Recruitment Rules of Labour Officer (Central Pool) Recruitment and Conditions of Service Rules, 1951 (hereinafter called "the 1951 Rules" for short). In terms of the provisions of the said rules, the age limit is 40 years. In terms of Rule 8(2) of 1951 Rules, Rule 30 of the CCS (Pension) Rules is applicable. However, in the year 1979, the petitioner opted to come back to his own cadre by seeking his reversion.

5. It is not dispute that the benefit of Rule 30 of the CCS (Pension) Rules had not been extended to 1958 Rules. He was promoted to the post of Assistant Labour Commissioner w.e.f. 12th January 1982 on ad hoc basis and w.e.f. 30th May 1985 on regular basis. On formation of Central Labour Service (CLS for short), he became a Member thereof and was posted as Labour Officer (Grade V Officer) on 1st June 1989 and while holding the said post, he superannuated on 31st January 1986. The petitioner completed 29 years, 4 months and 19 days of service and thus did not get full pension in the normal course where for 33 years of confirmed qualifying service were required.

6. The contention of the petitioner before the Learned Tribunal as also before us was that he, having regard to the provisions contained in Rule 30 of the liberalized CCS (Pension) Rules, was entitled to the benefit of added service of five years.

7. When the request of the petitioner was not acceded to by the respondents herein, he filed an Original Application before the Central Administrative Tribunal which was marked as OA No. 443/97. Upon consideration of the rival contentions of the parties, the learned Tribunal dismissed the said Original Application on 25th May 1998.

8. Mr. Inderjit Singh, the learned counsel appearing on behalf of the petitioner would submit that the learned Tribunal acted illegally and without jurisdiction in passing the impugned judgment in so far as it failed to take into consideration that the Hyderabad Bench of the Tribunal in a similar situation in the case of CCS Reddy v. Union of India, (OA No. 750/95 decided on 24th January 1996) had held that Rule 30 of the CCS (Pension) Rules, 1972 shall be applicable to all concerned.

9. The learned counsel would contend that proviso (3) appended to Rule 30 of the said Rules is not attracted in the instant case inasmuch as the same had come into being in the year 1992. Mr. Singh would contend that the said proviso cannot have any retrospective effect as the same was not a procedural law. The learned counsel, in this behalf, relied upon Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, .

10. As regards applicability of proviso (2) to the said Rules, the learned counsel would contend that the said proviso would be deemed to have been modified by reason of an Office Memorandum dated 25th September 1989.

11. Mr. Singh would urge that the Tribunal was bound by the decision of a coordinate Bench and could not have taken a different view.

12. The learned counsel would contend that having regard to the fact that the Central Labour Service came into being upon merger of existing cadres, the validity thereof cannot be questioned as the same has been upheld by the Apex Court in S.P. Shivprasad Pipal Vs. Union of India and Others, .

13. The learned counsel appearing on behalf of the respondents, on the other hand, would submit that keeping in view the fact that the 1951 Rules were not applicable in the case of the petitioner as he, on his own volition, had sought repatriation to his parent department and thus, having been governed by 1958 Rules was not entitled to the benefit thereof.

14. The learned counsel would contend that another Bench of the Hyderabad High Court, upon taking into consideration CCS Reddy's case (supra), as also the impugned judgment herein, has held that no benefit of the said Rules can be given to an employee as the petitioner. The relevant portion of the 1958 Rules provide:

(i) 50% of the posts by promotion by selection from Labour Enforcement Officer (C) who have completed not less than 3 years of service and rest by direct recruitment;

(ii) The age requirement is between 25 to 35 years;

(iii) The qualification:-

1. Degree of a recognised University preferably with Economics or Social Sciences;

(ii) Degree in Law of a recognised University or Master's or equivalent, Honours Degree in Economics or any other Social Sciences of a recognised University;

(iii) Diploma of a recognised institution in Labour Welfare or Labour Laws;

(iv) 5 years experience in Labour problems in responsible capacity in a Government Establishments or in any Industry or in a Trade Union organization."

15. The relevant provisions of the Central Labour Service Rules, 1987 provide:

"The posts of ALC, Assistant Welfare Commissioner and Labour Officer (Central Pool) were combined and Central Labour Service Rules were formed. The salient features of Central Labour Service Rules, 1987 are as under:--

(a) The service consists of five grades

(b) The lowest rung of the service is Grade-V of CLS in the pre-revised pay scale of Rs. 2200-4000;

(c) Grade-V posts are to be filled by promotion and direct recruitment in the ratio of 33 1/3% and 66 2/3% respectively;

(d) The Recruitment Rules of various services included in the Central Labour Service were repealed by Rule 17 of CLS Rules, 1987."

16. The 1951 Rules provided as under:

"(i) Appointed to the post of Labour Officers other than Senior Labour Officers shall be made by direct recruitment through Union Public Service Commission;

(ii) Essential qualifications required are dealt in Rule 5 of the said rules which reads as below:-

(1) A Bachelor's Degree in Arts of recognised University or equivalent with Economics or Commerce or Sociology as one the subjects:

(2) A post-graduate Degree or diploma in social work or Labour Welfare or Industrial Relations or Personnel Management or in any other allied subject, or a recognised University or equivalent.

(3) Two years" experience of Labour Welfare Work Industrial relations or Personnel Management or in any Organisation employing substantial labour force.

(iii) The maximum age limit is 40 years and below (relaxable for Govt. Servants).

(iv) The rule 8 (2) of the said rules reads as follows:-

"The benefit of added years of service under Rule 30 of the Central Civil Services (Pension) Rules, 1972 will be admissible to the Labour Officers of the Central Pool."

17. Rule 30 of the CCS (Pension) Rules is in the following terms:

"30. Addition t qualifying service in special circumstances:

(1) A Govt. servant who retires from a service or post after the 31st March, 1960 shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one- fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty five years or a period of five years, whichever is less if the service or post to which the Govt. servant is appointed is one-

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields is essential; and

(b) to which candidates of more than twenty five years of age are normally recruited.

Provided that this concession shall not be admissible to a Govt. servant unless his actual qualifying service at the time he quits Govt. service is not less than 10 years.

Provided further that this concession shall be admissible only if the Recruitment Rules in respect of the said service or post contain a specific provision that the

service or post is one which carries the benefit of this rule.

Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final for weightage of service under the sub-rule forgoing the counting of past service.

(2) A Govt. servant who is recruited at the age of thirty-five years or more, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to Contributory Provident Fund.

(3) The option referred to in Sub-rule (2) once exercised, shall be final"

18. The provisions of the afore-mentioned Rules clearly show that having regard to the upper age limit, an employee appointed in terms of Labour Officers (Central Pool) Rules will have much less qualifying service at the time of his superannuation which is bound to have an adverse effect on his pension and other pensionary benefits. However, in the case of Labour Enforcement Officer, such a benefit evidently had not been given as they can be recruited at a much younger age.

19. Rule 30 of the CCS (Pension) Rules, in no uncertain terms, states that added years of service can be given if the same is provided for under the Recruitment Rules. It is not in dispute that the 1958 Rules applicable to the Labour Enforcement Officer do not provide therefore.

20. Even in the Central Labour Service Rules, 1987, in terms whereof merger had taken place, no such provision exists.

21. The scope and ambit of the said Office Memo dated 29th May 1989 will have to be considered in that context. By reason of the said letter, merely those who were entitled to the benefit of 1951 Rules had been protected. Such an Office Memo obviously had been issued having regard to the fact that by reason of merger of cadre, the benefit granted to a section of employees in terms of statutory rules which existed at the relevant point of time cannot be taken away only because subsequently a merger of cadre had taken place. By reason of the said Office Memo dated 29th May 1989, no benefit had been granted to those officers who were recruited in terms of 1958 Rules which did not provide for grant of such benefit.

22. Be it recorded that the Labour Officer (Central Pool) Recruitment and Conditions of Service Rules 1951, the Assistant Labour Commissioner(C) Recruitment Rules 1958 and Labour Enforcement Officer (C) Rules 1958 were repealed by Section 17 of the Central Labour Service Rules 1987.

23. The spirit behind the making of Rule 30 of CCS (Pension) Rules appears to be that having regard to the fact that the age of retirement previously was 58 years and he would complete 33 years of service only in the event he joins service by

the age of 25 years. However, there may be certain posts where educational qualifications and experience prescribed would be such as a candidate may not be able to acquire by the age of 25 years. In terms of the said Rules, Therefore, losses of maximum 5 years can be compensated.

24. The second proviso appended to Rule 30 is a clear indication so far as the applicability of the relevant rules in this behalf is concerned.

25. For the foregoing reasons, we are of the opinion that the learned Tribunal has rightly held that the petitioner is not entitled to get any benefit of the said Office Memo dated 29th May 1989.

26. The learned counsel for the petitioner may be correct in his submission to the effect that the third proviso appended to Rule 30 may not be applicable in the instant case but it cannot be said that the requirement of fulfilling the criteria as contained in Rule 3 of the said Rules are completely wiped off by reason of the said Office Memo dated 29th May 1989.

27. We may note that the issue in question was not the subject matter of the decision of the apex Court in S.P. Shivprasad Pipal v. Union of India (supra).

28. Reliance placed by the learned counsel for the petitioner in Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, is also misplaced.

29. Keeping in view the fact that we have independently considered the matter on merit, it is not necessary for us to go into the question as to whether the learned Tribunal was wrong in not following the decision of the Hyderabad Bench of the Tribunal in CCS Reddy's case (supra).

30. We may, however, notice that the Hyderabad Bench of the Tribunal in K. Ramakrishna v. Union of India and Anr., in OA NO. 1135/97 has taken the same view as has been taken by the Principal Bench in the instant case.

31. For the foregoing reasons, we are of the opinion that no case is made out for interference with the impugned judgment. The writ petition is dismissed accordingly without any orders as to costs.